

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

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UNITED STATES OF AMERICA,	)
	)
Plaintiff,	)
	)
v.	) Civil Action No. 96-2489 (RLA)
	)
PUERTO RICO AQUEDUCT AND	)
SEWER AUTHORITY and THE	)
COMMONWEALTH OF PUERTO RICO,	)
	)
Defendants.	)
	)

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**JOINT MOTION FOR COURT APPROVAL OF RELEASE OF ESCROWED FUNDS**

Pursuant to this Court's Order of March 21, 2005, the United States of America, on behalf of the Environmental Protection Agency ("EPA"), and the Puerto Rico Aqueduct and Sewer Authority ("PRASA") file this Joint Motion for Court Approval of Release of Escrowed Funds.<sup>1</sup> The parties are in agreement that the funds that are currently being held in an escrow account due to PRASA's failure to achieve certain interim deadlines specified in Paragraph 3 of the Revised Consent Decree may be released to PRASA.

Paragraph 24(b) of the Decree provides in pertinent part:

PRASA shall pay the stipulated penalties which accrue for violations of the interim compliance deadlines specified in [various Paragraphs of the Consent Decree] in trust to the Government Development Bank of Puerto Rico as escrowee.

The Court by Omnibus Order of May, 1999, modified Paragraph 24(b) by requiring that PRASA

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<sup>1</sup> This Joint Motion is intended to satisfy the terms of the Court's March 21, 2005 Order that the "[p]laintiff shall file an updated Status Report regarding the escrowed funds. . ." Docket Number 128. In light of the subject of the instant Motion, the plaintiff respectfully submits that a Status Report is unnecessary.

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deposit stipulated penalties into the Registry of the Court to be held in escrow, instead of in trust of the Government Development Bank of Puerto Rico, and that PRASA notify the Court of such deposit.

During the course of the period since the Decree was entered, and as of May 1, 2005, PRASA has deposited approximately \$976,643.00 into the Registry of the Court under 96-2489 (RLA). The account information that appears on the receipts of deposits from the Registry of the Court is DO Code 4669, Div No. 1, Acct. 604700.

The Revised Consent Decree further provides that under certain conditions, those funds, plus the interest accrued thereon, may be returned to PRASA:

If PRASA completes construction of the secondary treatment facilities and all other treatment facilities necessary to achieve compliance with NPDES Permit No. PR0023795 or its successor permit, by the final compliance deadline specified in Paragraph 3(g) of this Consent Decree, or of the alternative facilities by the final compliance deadline specified in Paragraph 5(f) (whichever is applicable), the stipulated penalties which are paid into escrow under this Paragraph for violations of interim compliance deadlines . . .*shall be returned to PRASA along with any interest that accrues on the penalty payments in the escrow account.*

*Id.* (emphasis added). As the United States has noted in prior Status Reports, it has been appropriate for these penalties to remain in escrow until EPA was able to review and analyze PRASA's compliance with the final, issued, and effective "successor" permit. The successor permit became effective on June 1, 2004 and EPA has completed its analysis of PRASA's compliance with the successor permit. After due consideration, EPA has determined that PRASA has sufficiently satisfied the conditions specified in the Consent Decree for return of the escrowed funds.

Accordingly, the parties jointly move for an Order (in the form submitted herewith)

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permitting PRASA to proceed to withdraw all funds currently held in escrow under the account information DO Code 4669, Div No. 1, Acct. 604700, and all interest accrued thereon.

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CONCLUSION

For the reasons set forth above, the United States and the Puerto Rico Aqueduct and Sewer Authority respectfully request that the Court grant their Joint Motion for Court Approval of Release of Escrowed Funds.

Respectfully submitted,

KELLY A. JOHNSON  
Acting Assistant Attorney General

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DATED: May 27, 2005

ON BEHALF OF THE PUERTO RICO  
AQUEDUCT AND SEWER AUTHORITY

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CERTIFICATE OF SERVICE

I hereby certify that, this 27th day of May, 2005, I caused a copy of the Joint Motion for Court Approval of Release of Escrowed Funds to be sent to counsel at the following addresses:

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Director Federal Litigation Division  
Commonwealth of Puerto Rico  
Department of Justice  
P.O. Box 902192  
San Juan, Puerto Rico 00902-0192

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	)	
Defendants.	)	
	)	

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**ORDER**

AND NOW, this \_\_ day of \_\_\_\_\_, 2005, upon consideration of the parties' Joint Motion for Court Approval of Release of Escrowed Funds, it is hereby ORDERED that the Joint Motion is GRANTED and PRASA may proceed to withdraw all funds deposited by PRASA into escrow pursuant to the Revised Consent Decree in the above-captioned case and currently held in escrow by the Registry of the Court under account DO Code 4669, Div No. 1, Acct. 604700, and all interest accrued thereon.

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RAYMOND L. ACOSTA  
United States District Judge